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9 **IN THE UNITED STATES DISTRICT COURT**
10 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
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12
13 CARLOS CHACON-ARVIZO,
14 Petitioner,
15 v.
16 STEVE LANGFORD, Warden,
17 Defendants.
18

Case No. CV 16-1338 R (MRW)
ORDER DISMISSING ACTION

19 The Court grants the government's unopposed motion to dismiss this federal
20 habeas action as moot and for failure to prosecute.

21 * * *

22 Petitioner is a federal prisoner at FCI Lompoc. He filed a habeas action
23 (28 U.S.C. § 2241) challenging the calculation of the federal Bureau of Prisons
24 (BOP) regarding his credits for time spent in custody. (Docket # 1.) After
25 screening the petition, the Court (Magistrate Judge Wilner) directed the
26 government to respond to the petition. (Docket # 3.)

27 The government moved to dismiss the action as moot. (Docket # 5.) The
28 government explained that, after Petitioner filed this action, "the BOP re-examined

1 its determination regarding the award of pre-sentence custody credit to Petitioner.”
 2 (Id. at 3.) The BOP determined that Petitioner was now entitled to a considerable
 3 amount of credit (from mid-2012 through early 2014, and modified the start date of
 4 additional federal time in custody) that advanced his release date to October 2016.
 5 The government argued that Petitioner received the relief (that is, the custody
 6 credits) that he requested in the petition. On that basis, the government contended
 7 that Petitioner’s action was moot and should be dismissed. (Id. at 5-6.)

8 The Court issued an order summarizing the government’s motion for
 9 Petitioner’s benefit. (Docket # 6.) The Court further required Petitioner to respond
 10 to the government’s motion or voluntarily request the dismissal of the action by
 11 April 22. Judge Wilner specifically informed Petitioner that the action could be
 12 dismissed under Federal Rule of Civil Procedure 41(b) for failure to prosecute the
 13 case. (Id.) However, Petitioner failed to file a timely response.

14 * * *

15 1. Local Rule of Court 7-12 states that, after a party files a motion with
 16 the Court, the failure to file a required response “may be deemed consent to the
 17 granting [] of the motion.” That rule applies to the present dismissal motion. The
 18 government plausibly established that Petitioner received the relief that he
 19 requested in the habeas action when the BOP revisited its calculation of
 20 Petitioner’s pre-sentence credits. He received what he asked for in the habeas
 21 action, rendering the case moot. Petitioner’s failure to respond to the dismissal
 22 motion signifies his consent to the dismissal of the action.

23 2. Dismissal is also proper under Rule 41(b). Rule 41(b) provides that if
 24 a litigant “fails to prosecute or to comply with these rules or a court order, a
 25 defendant may move to dismiss the action or any claim against it.” Dismissal may
 26 be ordered by the Court sua sponte. Link v. Wabash R.R., 370 U.S. 626, 629-30
 27 (1962). Dismissal of a civil action under Rule 41 may be appropriate to advance
 28

1 the public's interest in the expeditious resolution of litigation, the court's need to
2 manage its docket, and to avoid the risk of prejudice to defendants. Omstead v.
3 Dell, Inc., 594 F.3d 1081, 1084 (9th Cir. 2010); Ferdik v. Bonzelet, 963 F.2d 1258,
4 1263 (9th Cir. 1992) (analyzing factors supporting dismissal of Section 1983
5 actions).

6 Petitioner's failure to prosecute this action warrants dismissal under
7 Rule 41(b). Petitioner failed to respond to the government's dismissal motion and
8 the Court's order requiring him to do so. (Docket # 5, 6.) The public, the Court,
9 and the government have a significant interest in the resolution of this case.
10 Petitioner, by contrast, has demonstrated a lack of interest in pursuing the action to
11 a decision on the merits, particularly now that he's received the prison credit that
12 he sought. Moreover, given Petitioner's failure to respond to the Court's order,
13 there are no "less drastic sanctions" available to the Court other than a dismissal of
14 the action. Omstead, 594 F.3d at 1084. Rule 41 therefore provides an additional
15 basis for dismissing the action.

16 * * *

17 Petitioner's case is moot, and he appears to have abandoned the action.
18 Accordingly, for the above reasons, this action is DISMISSED without prejudice.

19 IT IS SO ORDERED.

20
21 Dated: May 25, 2016



22 HON. MANUEL L. REAL
23 UNITED STATES DISTRICT JUDGE

24 Presented by:



26 HON. MICHAEL R. WILNER
27 UNITED STATES MAGISTRATE JUDGE
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